

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

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Staff:
Staff Report:
Hearing Date:
Commission Action:

Fernie Sy-LB
May 25, 2006
June 13-16, 2006

**STAFF REPORT: REVISED FINDINGS**

APPLICATION NO.: 5-04-466

APPLICANTS: Camden L.L.C., Attn: Bruce & Kathy Elieff

AGENT: Brion Jeannette & Associates

PROJECT LOCATION: 177 Shorecliff, Corona Del Mar (Orange County)

PROJECT DESCRIPTION: Demolition and construction of a new 8,990 square foot, two-story plus basement single-family residence with a 293 square foot 1st floor one-car garage and a 2,444 square foot subterranean six-car garage on a coastal bluff top lot, on deepened footing foundation. Also approved new hardscape, landscape and retaining walls. Grading consists of 7,430 cubic yards (3,715 cubic yards of cut, 270 cubic yards of fill and 3,445 cubic yards of export to a location outside of the coastal zone).

DATE OF COMMISSION ACTION: January 11, 2006

COMMISSIONERS ON PREVAILING SIDE: Commissioners Kram, Kruer, Neely, Reilly, Shallenberger, Wan and Caldwell.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission adopt the following revised findings in support of the Commission's action of January 11, 2006 approving the applicant's proposal to demolish and construct a new single-family residence on a coastal bluff top lot. The major issue raised at the public hearing related to the appropriateness of approving the project regarding scenic resources and hazard policies of the Coastal Act.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of Newport Beach only has a certified Land Use Plan (LUP) and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review applied was Chapter 3 of the Coastal Act. The certified LUP may be used for guidance.

LOCAL APPROVALS RECEIVED: Approval-in-Concept (#2659-2004) from the City of Newport Beach Planning Department dated December 3, 2004.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan; *Preliminary Geotechnical Investigation for New Single Family Residence, 177 Shorecliff Road, Corona Del Mar California, Project No. 71486-00/Report No. 04-5376*, prepared by Geo Firm dated August

17, 2004; Letter to Brion Jeannette Architecture from Commission staff dated January 7, 2005; Letter from Brion Jeannette Architecture to Commission staff dated March 31, 2005; *Response to California Coastal Commission Notice of Incomplete Application dated January 7, 2005, 177 Shorecliff Road, Corona Del Mar California, Project No. 71486-00/Report No. 04-5499r*), *Permit Application 5-04-466*, prepared by Geo Firm dated March 14, 2005; Letter from KNA Engineering, Inc. to Brion Jeanette Architecture dated March 29, 2005; Letter from Geo Firm to Brion Jeannette Architecture dated March 31, 2005; Letter from Commission staff to Brion Jeannette Architecture dated April 29, 2005; Letter from Brion Jeannette Architecture to Commission staff dated May 5, 2005, Letter from Brion Jeannette Architecture to Commission staff received September 13, 2005; Letter from Brion Jeannette Architecture to Commission staff received October 11, 2005; Letter from Brion Jeannette Architecture to Commission staff received October 21, 2005; Letter from Brion Jeannette Architecture to Commission staff received November 20, 2005; Letter from Brion Jeannette Architecture to Commission staff received November 30, 2005; Packet from Brion Jeannette Architecture to Commission staff received December 8, 2005; Letter from Brion Jeannette Architecture to Commission staff received December 13, 2005; Letter from Brion Jeannette Architecture to Commission staff received December 16, 2005; and . Letters from Brion Jeannette Architecture to Commission staff received December 20, 2005.

EXHIBITS

1. Vicinity Map
2. Assessor's Parcel Map
3. Site Plan Commission staff Bluff Edge Plan (Exhibit B-1)
4. ~~Commission staff Bluff Edge Plan Stringline Plan~~
5. ~~Coastal Development Permit (CDP) No. A-78-4367-(Bertea) for 173 Shorecliff Road~~
6. ~~Coastal Development Permit (CDP) No. 5-96-234-DW-(Bertea) for 173 Shorecliff Road~~
7. ~~Ex Parte Form From Commissioner Kruer~~

I. STAFF RECOMMENDATION

MOTION:

I move that the Commission adopt the revised findings in support of the Commission's action on January 11, 2006 concerning Coastal Development Permit Application No. 5-04-466.

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the June, 2006 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

Commissioners eligible to Vote on Revised Findings for Coastal Development Permit No. 5-04-466 are: Kram, Kruer, Neely, Reilly, Shallenberger, Wan and Caldwell

RESOLUTION TO ADOPT REVISED FINDINGS:

The Commission hereby adopts the findings set forth below for its approval of Coastal Development Permit Application No. 5-04-466 on the ground that the findings support the Commission's decision made on January 11, 2006 and accurately reflect the reasons for it.

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Assumption of Risk, Waiver of Liability and Indemnify

By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards from bluff and slope instability, erosion, landslides and wave uprush; (ii) to assume the risks to the applicants and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

2. Revised Project Plans

A. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for review and approval of the Executive Director, two (2) full size sets of revised project plans. The revised plans shall demonstrate the following:

That no portion of the proposed residence, basement, deck, roofline, stairs or any other principal or accessory development extend seaward of the bluff edge as determined by the Commission's staff geologist and shown on Exhibit B-1, which is attached with this Notice of Intent To Issue Permit.

B. The permittees shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

3. No Future Bluff or Shoreline Protective Device

A. By acceptance of this Permit, the applicants agree, on behalf of themselves and all other successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-04-466 including, but not limited to, the residence and hardscape and any future improvements, in the event that the development is threatened with damage or destruction from bluff and slope instability, erosion, landslides, wave uprush or other natural hazards in the future. By acceptance of this permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

B. By acceptance of this Permit, the applicants further agree, on behalf of themselves and all successors and assigns, that the landowner shall remove the development authorized by this permit, including the residence and hardscape, if any government agency has ordered that the structure(s) is/are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

4. Future Development

This permit is only for the development described in Coastal Development Permit No. 5-04-466. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-04-466. Accordingly, any future improvements to the single-family house authorized by this permit, including but not limited to improvements to the residence, hardscape, change in use from a permanent residential unit and repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections

13252(a)-(b), shall require an amendment to Permit No. 5-04-466 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

5. Conformance with Geotechnical Recommendations

- A.** All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with the setback requirements identified in Special Condition 2 of this permit and all recommendations contained in the geologic engineering investigations: *Preliminary Geotechnical Investigation for New Single Family Residence, 177 Shorecliff Road, Corona Del Mar California, Project No. 71486-00/Report No. 04-5376*), prepared by Geo Firm dated August 17, 2004, Response to California Coastal Commission Notice of Incomplete Application dated January 7, 2005, 177 Shorecliff Road, Corona Del Mar California, Project No. 71486-00/Report No. 04-5499r), Permit Application 5-04-466, prepared by Geo Firm dated March 14, 2005, Letter from KNA Engineering, Inc. to Brion Jeanette Architecture dated March 29, 2005; and Letter from Geo Firm to Brion Jeannette Architecture dated March 31, 2005.
- B.** **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit, for the Executive Director's review and approval, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all the recommendations specified in the above-referenced geologic engineering report.
- C.** The permittees shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment unless the Executive Director determines that no amendment is required.

6. Drainage and Runoff Control Plan

- A.** **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit, for review and approval of the Executive Director, two (2) full size sets of final drainage and run-off control plans. The drainage and runoff control plan shall show that all roof drainage, including roof gutters and collection drains, and sub-drain systems for all landscape and hardscape improvements for the residence and all yard areas, shall be collected on site for discharge to the street through piping without allowing water to percolate into the ground.
- B.** The permittees shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

- C. The applicants shall maintain the functionality of the approved drainage and runoff control plan to assure that water is collected and discharged to the street without percolating into the ground.

7. Pool and Spa Protection Plan

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for review and approval of the Executive Director, two (2) full size sets of final pool and spa protection plans prepared by an appropriately licensed professional that incorporates mitigation of the potential for geologic instability caused by leakage from the proposed pool and spa. The final pool and spa protection plan shall incorporate and identify on the plans the follow measures, at a minimum: 1) installation of a pool leak detection system such as, but not limited to, leak detection system/moisture sensor with alarm and/or a separate water meter for the pool and spa which are separate from the water meter for the house to allow for the monitoring of water usage for the pool and spa, and 2) use of materials and pool design features, such as but not limited to double linings, plastic linings or specially treated cement, to be used to waterproof the undersides of the pool and spa to prevent leakage, along with information regarding the past and/or anticipated success of these materials in preventing leakage; and where feasible 3) installation of a sub drain or other equivalent drainage system under the pool and spa that conveys any water leakage to an appropriate drainage outlet. The applicants shall comply with the final pool plan approved by the Executive Director.

8. Landscaping Plan

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, in a form and content acceptable to the Executive Director, two (2) full size sets of final landscaping plans prepared by an appropriately licensed professional which demonstrates the following:

(1) The plan shall demonstrate that:

- (a) All planting shall provide 90 percent coverage within 90 days and shall be repeated if necessary to provide such coverage;
- (b) All plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan;
- (c) Landscaped areas not occupied by hardscape shall be planted and maintained for slope stability and erosion control. To minimize the need for irrigation and minimize encroachment of non-native plant species into adjacent or nearby native plant areas, all landscaping shall consist of native and/or drought tolerant non-invasive plant species. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of

California or the U.S. Federal Government shall be utilized within the property. Any existing landscaping that doesn't meet the above requirements shall be removed.

(d) No permanent irrigation system shall be allowed within the property. Any existing in-ground irrigation systems shall be disconnected and capped. Temporary above ground irrigation to allow the establishment of the plantings is allowed. The landscaping plan shall show all the existing vegetation and any existing irrigation system.

(2) The plan shall include, at a minimum, the following components:

(a) A map showing the type, size, and location of all plant materials that will be on the developed site, the irrigation system, topography of the developed site, and all other landscape features, and

(b) a schedule for installation of plants.

B. The permittees shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

9. Deed Restriction

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the landowners have executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

A. **PROJECT LOCATION, DESCRIPTION AND PRIOR COMMISSION ACTION**

1. Project Location

The proposed single-family residence at 177 Shorecliff Road is located on a coastal bluff top lot situated on the seaward side of Shorecliff Road in the community of Shorecliffs in Corona Del Mar (Newport Beach) (Exhibits #1-2). The lot size is approximately 21,459 square feet and the City of Newport Beach Land Use Plan (LUP) assigns two different land use designations for different portions of the subject site. The base of the bluff and the adjacent beach area is designated Recreational and Environmental Open Space and the area from the base up to the street is designated Single-Family Detached Residential. The project is located within an existing developed urban residential area and the existing house is located at the bluff edge, which is approximately at the 67-foot contour, and the existing pool is located on the ~~bluff top bench cut into the bluff face, seaward of the bluff edge~~. To the North of the project site is Shorecliff Road. To the East and West of the project site exist single-family residential developments. To the South of the project site is an undeveloped vegetated bluff, Little Corona Beach and the Pacific Ocean. The project site consists of a quarter-acre level building pad supported above a generally natural coastal bluff face. The overall height of the slope is approximately 50-feet. The slope ratio is variable, with the lower slope near 3.5:1 (horizontal: vertical) and the upper slope near 1.5:1, but overall; the slope is near a 2:1 ratio. In the project area, the lower slope is mantled with an apron of slopewash. At the base of the bluff is a narrow beach area that transitions from sandy beach to rocky beach.

2. Project Description

The proposed project consists of demolition of an existing single-family residence with an attached garage and construction of a new 8,990 square foot, two-story single-family residence plus basement, a 860 square foot 2nd floor deck, a 441 square foot roof deck, a 293 square foot 1st floor one-car garage, and a 2,444 square foot subterranean six-car garage, which is part of the basement level on a coastal bluff top lot (~~Exhibit #3~~). This proposed development would ~~still~~ encroach to and in some instances beyond the bluff edge. In addition, the applicants are proposing hardscape beyond the bluff edge and a new pool located on the bluff face (Exhibit #3). ~~The proposed pool would be on the bluff top no further seaward than the existing pool bench cut into the bluff face, seaward of the bluff edge~~. Grading will consist of 7,430 cubic yards (3,715 cubic yards of cut, 270 cubic yards of fill and 3,445 cubic yards of export to a location outside of the coastal zone). The foundation of the residence will consist of a combination of deepened footings and retaining walls.

3. Prior Commission Action in Subject Area

See Appendix A

B. SCENIC RESOURCES

Section 30251 of the Coastal Act states, in relevant part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...

~~The City of Newport Beach Land Use Plan (LUP) was certified on May 19, 1982. Since the City only has an LUP, the policies of the LUP are used only as guidance. The recently updated (October 2005) Newport Beach LUP includes the following policies that relate to development at the subject site:~~

~~Require all new blufftop development located on a bluff subject to marine erosion to be sited in accordance with the predominant line of existing development in the subject area, but not less than 25 feet from the bluff edge. This requirement shall apply to the principal structure and major accessory structures such as guesthouses and pools. The setback shall be increased where necessary to ensure safety and stability of the development.~~

~~On bluffs subject to marine erosion, require new accessory structures such as decks, patios and walkways that do not require structural foundations to be sited in accordance with the predominant line of existing development in the subject area, but not less than 10 feet from the bluff edge. Require accessory structures to be removed or relocated landward when threatened by erosion, instability or other hazards.~~

Section 30251 of the Coastal Act requires that scenic and visual qualities of coastal areas be protected. The project is located on a coastal blufftop lot overlooking Little Corona Beach and the ocean below and is visible from these sites. Because the project will potentially affect views from public vantage points any adverse impacts must be minimized. Pursuant to Section 30251, it is necessary to ensure that the development will be sited to protect views to and along the bluffs and minimize the alteration of existing landforms.

~~Establishing a limit of development and setting development further back from the edge of the coastal bluff decreases a development's visibility from public vantage points, thus protecting views and the scenic quality of the area as well as preventing alteration of the natural landform. Concentrating the development on the bluff top and away from the bluff edge and bluff face also reduces alteration of the natural bluff landform by avoiding grading and construction of structures on the currently highly scenic bluff where there presently is no development. For these reasons, the Commission typically imposes some type of bluff edge set back. The proposed project is inconsistent with Section 30251 of the Coastal Act and the City's LUP policy regarding coastal bluff sites as discussed below.~~

1. Scenic View Impacts (Stringline and Bluff Edge Setback Analysis)

~~Seaward encroachment of new development can often have adverse impacts on a variety of coastal resources. For example, the seaward encroachment of private development toward a beach can discourage public utilization of the beach adjacent to such development. The seaward encroachment of structures can also have adverse visual~~

impacts. In addition, the seaward encroachment of structures can increase the hazards to which the new development will be subjected (the hazard and access issues are discussed elsewhere in these findings). Therefore, in Newport Beach the Commission has often used either 1) a string line evaluation; or 2) a minimal 25-foot bluff edge setback in areas where geologic conditions are such that the site can be presumed stable for the useful economic life of the development. If a stringline is used, two types of string lines are applied to evaluate a proposed project—a structural string line and a deck/accessory structure string line. A structural string line refers to the line drawn between the nearest adjacent corners of the adjacent structures on either side of the subject site. Similarly, a deck/accessory structure string line refers to the line drawn between the nearest adjacent corners of adjacent decks/accessory structures on either side of the subject site. String line setbacks and bluff edge setbacks are applied to limit new development from being built any further seaward than existing adjacent development. If not properly regulated the continued seaward encroachment of development can have a significant cumulative adverse impact on coastal resources.

Stringline

Applying a stringline to the proposed project is difficult due to the differing topography of the project site and adjacent residences that would be used to make this analysis. The bluff edge of the adjacent sites and area undulate widely from lot to lot, so a setback based upon stringline would not adequately protect the bluff landform. The applicant did not provide a stringline analysis. Thus, Commission staff produced Exhibit #4, which depicts the structural stringline using the Commission's practiced methodology. If a structural stringline were to be implemented, a large portion of the proposed basement level area would be seaward of the structural stringline (i.e. the enclosed living space exceeds the stringline by approximately 12-feet). Commission staff was unable to depict a deck/accessory structure stringline since adequate reference points were not shown on the applicants' site plan. It is possible that the proposed hardscape and pool may be located within the deck/accessory structure stringline; nonetheless, the proposed hardscape and pool are being placed on the bluff face. Thus, the development is not minimizing the potential that the development will contribute to visual impacts and be subject to hazards. Even so, applying a stringline to the proposed project is difficult due to the differing topography of the project site and adjacent residences that would be used to make this analysis. Thus, using the stringline would not adequately control the seaward encroachment of development and would result in development that is inconsistent with Section 30251 of the Coastal Act.

Bluff Edge Setback

In cases where use of a stringline to limit seaward encroachment of development is not appropriate, the Commission will use a bluff edge setback for primary structures and accessory improvements. Such a setback is derived for site-specific conditions and is designed to assure stability of the development for its useful economic life. A minimal setback may be warranted where those slopes are stable and historic bluff retreat has been minimal. This setback is also useful to address visual impacts. In these cases in Newport Beach, the Commission typically requires that habitable structures be setback at least 25-foot from the bluff edge and hardscape features be setback at least 10-foot from the bluff edge to minimize the potential that the development will contribute to visual impacts and be subject to hazards.

Applying the definition of bluff edge found in Section 13577 of the California Code of Regulations, the Commission's staff geologist has determined that the bluff edge in the northwestern portion of the site is located approximately at the 67-foot elevation contour depicted on the applicant's plans. At the southwestern portion of the site, a pad has been cut into the bluff top, resulting in a landward movement of the bluff edge. The new bluff edge that resulted from this grading is obscured beneath the existing residence. However, the Commission's staff geologist notes that, for the southwestern portion of the site, the bluff edge can be no further seaward than the seaward edge of the existing residence (Exhibit #4), which accordingly can be taken conservatively as the bluff edge. Note that the "Bluff Edge Per Section 13577..." depicted on the applicant's plans—and found on Exhibits #3-4—is not accurate. An estimation of the actual bluff edge location based on Section 13577 can be found on Exhibit #4 (see Commission Staff's Bluff Edge Determination' on that exhibit).

The proposed project includes enclosed living space that encroaches to and in some instances beyond the bluff edge located approximately at the 67-foot contour (Exhibit #4). The applicants have also proposed hardscape and a new pool such that the hardscape and new pool are confined to the footprint of the existing pool and hardscape. However, the proposed pool would be on the bench cut into the bluff face, seaward of the bluff edge. Therefore, the proposed residence and hardscape and appurtenant features do not adhere to the typically required 25-foot and 10-foot bluff edge setbacks (Exhibit #4). These setbacks have previously been imposed on other development in the project vicinity (see Appendix A). Adherence to the 25-foot setback and 10-foot setback for the proposed development would be consistent with the previous actions taken in the project area.

The existing bluff face is a natural landform visible from public vantage points such as Little Corona Beach. Any alteration of this landform would affect the scenic views of the coastline when viewed from the beach. The proposed project would significantly alter the appearance of the undeveloped vegetated bluff. This new development must be appropriately sited to minimize adverse effects to existing scenic resources. Accordingly, the residential structure and major accessory improvements should be sited at least 25-feet from the bluff edge and any hardscape, stairways, retaining walls or other appurtenances should be located at least 10-feet from the bluff edge. No development should be located within 10-feet of the bluff edge or upon the bluff face, as is proposed by the applicants. Thus, the proposed development does not minimize landform alteration and visual impacts as required by Section 30251 of the Coastal Act.

2. City of Newport Beach Land Use Plan (LUP)

The City of Newport Beach recently updated their Land Use Plan (LUP). Included in this update were policies directly relating to development taking places on bluffs. One relevant policy states the following: *Require all new blufftop development located on a bluff subject to marine erosion to be sited in accordance with the predominant line of existing development in the subject area, but not less than 25 feet from the bluff edge. This requirement shall apply to the principal structure and major accessory structures such as guesthouses and pools. The setback shall be increased where necessary to ensure safety and stability of the development* [Emphasis added]. Another relevant policy states *On bluffs subject to marine erosion, require new accessory structures such as*

~~decks, patios and walkways that do not require structural foundations to be sited in accordance with the predominant line of existing development in the subject area, but not less than 10 feet from the bluff edge. Require accessory structures to be removed or relocated landward when threatened by erosion, instability or other hazards [Emphasis added].~~ The proposed residential structure encroaches to and in some instances beyond the bluff edge, while hardscape and a new pool are confined to the footprint of the existing pool and hardscape; however, the proposed pool would be on the bench cut into the bluff face, seaward of the bluff edge. Therefore, portions of the proposed residence and hardscape and appurtenant features do not adhere to the required 25-foot and 10-foot bluff edge setbacks. Thus, the proposed development is inconsistent with the recently updated LUP because the development does not adhere to the required 25-foot and 10-foot bluff edge setbacks.

3. Landform Alteration

The proposed project will consist of grading that will comprise of 7,430 cubic yards (3,715 cubic yards of cut, 270 cubic yards of fill and 3,445 cubic yards of export to a location outside of the coastal zone). The proposed grading would be accomplished in order to place the proposed structures on the bluff top and bluff face. Currently, the bluff face is highly scenic and undeveloped; however, the proposed project would result in significant alteration of the bluff face. As such, new development at the subject site must be appropriately sited to minimize adverse effects to natural landforms. The proposed development does not minimize such adverse effects and is inconsistent with Section 30251 of the Coastal Act.

Conclusion

The Commission finds that the proposed project is not sited and designed to protect scenic and visual qualities of coastal areas as a resource of public importance. Denial of the proposed project would preserve existing scenic resources. The alteration of the bluff would result in an adverse visual effect when viewed from public vantage points such as Little Corona Beach. The Commission finds that the proposed project would result in the alteration of natural landforms. Consequently, the proposed project would increase adverse impacts upon visual quality in the subject area. Therefore, the Commission finds that the proposed project is inconsistent with Section 30251 of the Coastal Act and with the City's LUP policy regarding coastal bluff sites and therefore must be denied.

Establishing a limit of development and setting development further back from the edge of the coastal bluff decreases a development's visibility from public vantage points. For these reasons, the Commission typically imposes some type of bluff edge set back.

City Setback

The plans submitted by the applicant show that the project conforms to the City zoning setback requirement of 6-feet from the rear property line, but conformance with the City required setback however does not address the potential visual and scenic resource impacts that the oceanward encroaching development will have on the project site. Adhering to the City setback of 6-feet from the rear property line does not achieve the objectives of Coastal Act Section 30251 because the rear property line is located on the beach.

Stringline

Since the City's rear property line setback cannot be used to avoid the potential impacts that the oceanward encroaching development will have on the project site, the applicability of the structural and deck stringlines will be evaluated. Two types of string lines are applied to evaluate a proposed project--a structural string line and a deck string line. A structural string line refers to the line drawn from the nearest adjacent corners of adjacent habitable structures. Similarly, a deck string line refers to the line drawn from the nearest adjacent corners of adjacent decks. Applying a stringline to the proposed project is difficult due to the differing topography of the project site and adjacent residences that would be used to make this analysis. The bluff edge of the adjacent sites and area undulate widely from lot to lot, so a setback based upon stringline would not adequately protect the bluff landform. Therefore, a stringline cannot be applied in this case. As to be seen in the following hazards section of the staff report, the Commission found that the bluff edge is a sufficient setback. In regards to Section 30251 of the Coastal Act, this setback is also consistent with community character as this minimal setback would prevent development seaward of the bluff edge and also would be protective of scenic resources. Therefore, the Commission imposed **Special Condition No. 2**, which requires the applicant to submit revised project plans showing that no portion of the proposed residence, basement, deck, roofline, stairs or any other principal or accessory development extend seaward of the bluff edge as determined by the Commission's staff geologist (Exhibit #3).

In addition, the future development restriction will ensure that improvements are not made at the blufftop that could affect the visual appearance of the coastal bluff or affect the stability of the bluff. The landscaping condition requires that the applicant install native and/or non-native, drought tolerant, non-invasive plants throughout the site.

Therefore, the Commission finds that, as proposed and conditioned, the project will not obstruct significant coastal views from public vantage points and is consistent with the visual resource protection provisions of Section 30251 of the Coastal Act.

C. HAZARDS

Section 30253 of the Coastal Act states, in pertinent part:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

The subject site is an oceanfront lot where the toe of the bluff is periodically subject to direct wave attack. There is no wide sandy beach or intervening development between the toe of the bluff and the ocean. Development on a bluff is inherently risky due to the potential for bluff erosion and collapse. Bluff development poses potential adverse impacts to the geologic stability of bluffs and the stability of residential structures. In general, bluff instability is caused by environmental factors and impacts caused by humans. Environmental factors include seismicity,

wave attack, drying and wetting of soils, wind erosion, salt spray erosion, rodent burrowing, percolation of rain water, poorly structured bedding, and soils conducive to erosion. Factors attributed to humans that may be relevant to this site include irrigation, over-watering, building too close to the bluff edge, improper site drainage, use of impermeable surfaces that increase runoff, use of water-dependent vegetation, and breaks in water or sewage lines.

1. Site Specific Bluff Information

To address site-specific geotechnical issues with the proposed residence (the proposed pool was not reviewed by the applicants' geologist), the applicants have submitted several reports including *Preliminary Geotechnical Investigation for New Single Family Residence, 177 Shorecliff Road, Corona Del Mar California, Project No. 71486-00/Report No. 04-5376*), prepared by Geo Firm dated August 17, 2004; *Response to California Coastal Commission Notice of Incomplete Application dated January 7, 2005, 177 Shorecliff Road, Corona Del Mar California, Project No. 71486-00/Report No. 04-5499r*), *Permit Application 5-04-466*, prepared by Geo Firm dated March 14, 2005; Letter from KNA Engineering, Inc. to Brion Jeanette Architecture dated March 29, 2005; and Letter from Geo Firm to Brion Jeannette Architecture dated March 31, 2005.

The geotechnical reports analyzed the stability of the project site and made the following statements: *"In the area of the site, the lower slope is mantled with an apron of slopewash suggesting predominantly subaerial erosional process and a significant history without active erosion along the base of the slope."* Furthermore, the geotechnical reports claim: *"Deep seated failure of the slope is considered unlikely due to its 2:1 overall slope ratio, moderate height, and underlying bedrock and terrace deposits. Upper slope terrace deposits and slopewash deposits which mantel the lower bluff slope face are considered surficially unstable and may be prone to failure under conditions of saturation or seismic acceleration. Such instability will not affect the proposed development in consideration of appropriate foundation design as recommended herein."* In addition, the geologic reports state that the foundation system for the residence will likely consist of a combination of conventional footings, deepened footings and retaining walls. In addition, a caisson and lagging shoring system is proposed to support the grade change with the lot to the north. The geotechnical reports conclude that: *"The bedrock materials backing the slope are anticipated to remain grossly stable. The terrace deposits and slopewash mantling the slope face is considered surficially unstable. The foundation system along the rear of the proposed residence should be designed to isolate proposed improvements from potential surficial instability of the slope."* In response to this geotechnical finding, the applicants have proposed that the foundation system along the rear yard will consist of deepened, continuous footing. Siting the proposed development at the bluff edge and upon the bluff face necessitates this enhanced foundation system. Furthermore, the applicants had originally proposed a row of approximately fourteen (14) 24" diameter caissons along the western property line, separate from the residential foundation system, to protect the project site. However, the applicants have now decided to use grading instead of caissons.

The Commission typically requires that even when coastal bluffs are relatively stable, habitable structures be setback at least 25-feet from the bluff edge and hardscape features be setback at least 10-feet from the bluff edge to minimize the potential that the development will contribute to visual impacts. The proposed residential structure and hardscape encroaches to and in some instances beyond the bluff edge, while hardscape

~~and a the new pool are is on the bluff top no further seaward than the existing pool confined to the footprint of the existing pool and hardscape; however, the proposed pool would be on the bench cut into the bluff face, seaward of the bluff edge.~~ Therefore, the proposed residence and hardscape and appurtenant features do not adhere to the typically required 25-foot and 10-foot bluff edge setbacks. Rather than placing development landward of the 25-foot setback and 10-foot setback from bluff edge, and include an adequate safety buffer to address anticipated bluff retreat over the life of the development and minimize risks, the proposed project includes development seaward of the 25-foot and 10-foot setbacks. However at the hearing, the Commission determined that due to the site-specific information it received regarding the stability of the site that a minimal setback was acceptable. The bluff edge was determined to be the appropriate setback. Thus, no portion of the proposed residence, basement, deck, roofline, stairs or any other principal or accessory development shall extend seaward of the bluff edge. ~~In addition, the proposed deepened foundation and grading is being used to mitigate risks, not minimize or avoid them. New development, such as the proposed residence, should be sited and designed to minimize or avoid risks.~~

2. Coastal Hazards

To analyze the suitability of the site for the proposed development relative to potential wave hazards, Commission staff requested the preparation of a wave run-up, flooding, and erosion hazard analysis, prepared by an appropriately licensed professional (e.g. coastal engineer). The purpose of this analysis is to determine the potential for future storm damage and any possible mitigation measures, which could be incorporated into the project design. In response, the applicants have provided a report entitled *New Single Family Residence, 177 Shorecliff Road, Corona Del Mar California, Project No. 71486-00/Report No. 04-5376*), prepared by Geo Firm dated August 17, 2004, which addresses the potential of hazard from flooding and wave attack at the subject site. The study states that review of aerial photographs from October 14, 1939 and July 30, 1970 reveals that little geomorphic changes appear to have occurred. In addition, it does state the beach at the base of the slope appears wider in 1939 than it was in 1970 and attributes that to: “... late summer season sand return resulting from the tropical storm three weeks prior to the 1939 photographs and/or the early summer sand depletion common during the winter season in the July photographs.” Furthermore, it states: “*The primary historic mode of erosion and retreat in the vicinity in the site is piecemeal rock toppling of the bedrock materials, as it is slowly but progressively undermined by erosion at the base of the sea cliff. However, the site is supported by a relatively gentle slope, not a seacliff, and is currently protected from westerly swells and windwaves by the adjacent promontory and rocky outcrop beach at the base. The mantle of slopewash present along the lower sea bluff is evidence that wave erosion has been absent in recent times, likely due to protection from the offshore harbor breakwater and locally by the adjacent promontory. Shoreline protection along the rear of the property is not anticipated during a 75-year life span of the development providing proper foundation as recommended herein.*”

Although the applicants' report indicates that the site is safe for development at this time, beach areas are dynamic environments, which may be subject to unforeseen changes. Such changes may affect beach processes. For example, the study states erosion at the base of the sea cliff has historically occurred. However, the site is currently protected from westerly swells and windwaves by the adjacent promontory and rocky outcrop beach at the base. However, if something were to happen that would cause damage to the

adjacent promontory and rocky outcrop beach at the base, then significant shoreline retreat may occur. Therefore, the proposed development is located in an area where coastal hazards exist and can adversely impact the development.

Conclusion

~~The proposed development is located in a hazard-prone environment. On the other hand, geotechnical investigations conclude that the proposed project is feasible from the engineering perspective, but only given an enhanced foundation system. The fact that a project could technically be built at this location is not sufficient to conclude that it *should* be undertaken. The project should be designed so that no enhanced engineering solutions are required for construction of the proposed project.~~

3. Conclusions and Special Conditions

Section 30253 of the Coastal Act states that new development shall minimize the impacts of the proposed development on bluff erosion and instability, and prevent the necessity for bluff protective structures. William Kockelman, U.S. Geological Survey, wrote an article entitled "Some Techniques for Reducing Landslide Hazards" that discusses several ways to minimize landslide hazards such as bluff erosion and instability, including:

- A. Require a permit prior to scraping, excavating, filling, or cutting any lands.
- B. Prohibit, minimize, or carefully regulate the excavating, cutting and filling activities in landslide areas.
- C. Provide for the proper design, construction, and periodic inspection and maintenance of weeps, drains, and drainage ways, including culverts, ditches, gutters, and diversions.
- D. Regulate the disruption of vegetation and drainage patterns.
- E. Provide for proper engineering design, placement, and drainage of fills, including periodic inspection and maintenance.

Kockelman also discusses the option of disclosure of hazards to potential buyers by the recordation of hazards in public documents. The imposition of the assumption of risk condition and the recordation of that condition on the title to the property is one means the Commission utilizes to inform existing and future buyers of property of the potential threat from soil erosion and slope failure (landslide) hazards. Several of these recommendations are routinely required by local government, including requiring permits for grading, minimizing grading, and requirements for proper engineering design.

The Commission has imposed many of these same recommendations, including requiring the consulting geologist to review foundation and drainage plans in order to confirm that the project conforms to the policies of the Coastal Act. The findings in the staff report regarding the general causes of bluff erosion and the specific findings from the geotechnical report confirm that the coastal bluff at this location is slowly eroding and that measures to minimize bluff erosion are necessary. The following special conditions will mitigate the impacts of the proposed development on bluff erosion and instability, and

prevent the necessity for bluff protective structures, as required by Section 30253 of the Coastal Act.

a. Assumption of Risk

Coastal bluffs in southern California are recently emergent landforms in a tectonically active environment. Any development on an eroding coastal bluff involves some risk to development.

Although adherence to the geotechnical consultant's recommendations will minimize the risk of damage from erosion, the risk is not entirely eliminated. The findings in Sections 1-2 above, including site-specific geologic information, support the contention that development on coastal bluffs involves risks and that structural engineering can minimize some of the risk but cannot eliminate it entirely. Therefore, the standard waiver of liability condition has been attached via **Special Condition No. 1.**

By this means, and through the deed restriction condition, the applicants and future buyers are notified that the proposed development is located in an area that is potentially subject to bluff erosion that can damage the applicants' property. In addition, the condition insures that the Commission does not incur damages as a result of its approval of the coastal development permit.

b. Revised Plans

Development on coastal bluffs is inherently risky due to the potential for slope failure. Bluff top development poses potential adverse impacts to the geologic stability of cliffs and the stability of residential structures. To meet the requirements of the Coastal Act, bluff top developments must be sited and designed to minimize risks and assure geologic stability and structural integrity for their expected economic lifespans while minimizing alteration of natural landforms.

The Commission typically requires that even when coastal bluffs are relatively stable, habitable structures be setback at least 25-feet from the bluff edge and hardscape features be setback at least 10-feet from the bluff edge to minimize the potential that the development will contribute to visual impacts. The proposed residential structure and hardscape encroach to and in some instances beyond the bluff edge, while the new pool is on the bluff top no further seaward than the existing pool. Therefore, the proposed residence and hardscape and appurtenant features do not adhere to the typically required 25-foot and 10-foot bluff edge setbacks. However at the hearing, the Commission determined, due to the site-specific information regarding the stability of the site, that a minimal setback was acceptable. The bluff edge was determined to be the appropriate minimal setback. The Commission also found that this setback was protective of the scenic resources of the area. Therefore, the Commission is imposing **Special Condition No. 2**, which requires the applicant to submit revised project plans showing that no portion of the proposed residence, basement, deck, roofline, stairs or any other principal or accessory development extend seaward of the bluff edge as determined by the Commission's staff geologist (Exhibit #3).

c. Bluff and Shoreline Protective Devices

Coastal bluff lots are inherently hazardous, especially those located adjacent to the ocean. It is the nature of bluffs to erode. Bluff failure can be episodic, and bluffs that seem stable now may not be so in the future. Even when a thorough professional geotechnical analysis of a site has concluded that a proposed development is expected to be safe from bluff retreat or wave up-rush hazards for the life of the project, it has been the experience of the Commission that in some instances, unexpected bluff retreat episodes that threaten development during the life of a structure sometimes do occur. In the Commission's experience, geologists cannot predict with absolute certainty if or when bluff failure on a particular site may take place, and cannot predict if or when a residence or property may become endangered.

Section 30253 of the Coastal Act states that new development shall not require construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The proposed development could not be approved as being consistent with Section 30253 of the Coastal Act if projected bluff retreat would affect the proposed development and necessitate construction of a protection device.

No bluff or shoreline protection device is proposed. However, because the proposed project includes new development, it can only be found consistent with Section 30253 of the Coastal Act if a bluff and shoreline protective device is not expected to be needed in the future. Therefore, the Commission imposes **Special Condition No. 3**, which states that no future bluff or shoreline protective devices shall be permitted to protect the proposed development.

d. Future Development

The development is located within an existing developed area and, as conditioned, is compatible with the character and scale of the surrounding area. However, without controls on future development, the applicants could construct future improvements to the single-family house, including but not limited to improvements to the residence and decks, that would have negative impacts on coastal resources, and could do so without first acquiring a coastal development permit, due to exemption for improvements to existing single-family residences in Coastal Act Section 30610 (a). In order to prevent the current authorization from allowing such future potential effects, it is necessary to ensure that any future development -- including development that would otherwise normally be exempt -- will require a permit. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission imposes **Special Condition No. 4**, a future improvements special condition. As conditioned the development conforms with the Chapter 3 policies of the Coastal Act relating to geologic hazards.

e. Conformance with Geologic Recommendations

The geotechnical consultant has found that the proposed development is feasible provided the recommendations contained in the geotechnical report prepared by

the consultant are implemented as regards the design and construction of the project. The geotechnical recommendations address foundations, excavation, and footings. In order to insure that risks of development are minimized, as per Section 30253, the Commission imposes **Special Condition No. 5**, which states that the geotechnical consultant's recommendations should be incorporated into the design of the project. As a condition of approval the applicants shall submit for the review and approval of the Executive Director foundation plans reviewed and signed by a consulting geologist indicating that the recommendations have been incorporated.

f. Drainage and Runoff and Landscaping Special Conditions

In approving development on a coastal bluff the Commission must ensure that the development minimizes potential erosion or, as it is stated in Section 30253 "...to neither create nor contribute significantly to erosion..."

Along the urbanized bluffs of southern California, geologic instability has been increased through the addition of large volumes of irrigation water required to maintain lawns and non-native vegetation in the yards of cliff top homes. It is difficult to assess the long-term damage caused by the accumulation of water on bluff topsoils due to watering of lawns and other water intensive vegetation. Landscape irrigation alone is estimated to add the equivalent of 50 to 60 inches of additional rainfall each year to garden and lawn areas. This irrigation has led to a slow, steady rise in the water table that has progressively weakened cliff material and lubricated joint and fracture surfaces in the rock along which slides and block falls are initiated. Also, the weight of the saturated soils weakens the cliff. In addition to these effects, surface runoff discharged through culverts at the top or along the face of the bluffs leads to gullyng or failure of weakened surficial materials. In this respect the Commission fills an important role in minimizing landsliding and erosion.

The Commission has acted on many coastal development permits in which an applicant has applied for bluff protective measures following the failure of irrigation lines, water or sewer lines which then cause slope failure. It is extremely difficult to discover breaks in in-ground irrigation lines until after a certain period of time passes and plants start to die. By then the slope may have become saturated.

The applicants previously submitted a drainage and run-off control plan, however, no new drainage and run-off control plans have been submitted for the revised project. Therefore, the Commission is imposing **Special Condition No. 6**, which requires that the applicants shall prepare prior to issuance of this permit a final drainage and run-off control plan.

The proposed project consists of a new pool near the bluff edge. If water from the proposed pool is not properly controlled there is a potential for bluff failure due to the infiltration of water into the bluff. For this reason, the potential for infiltration into the bluff should be minimized. This can be achieved by various methods, including having the pool double lined and installing a pool leak detection system to prevent the infiltration of water into the bluff due to any possible pool or spa problems. However, the applicants have not proposed any such measures.

Therefore, the Commission imposes **Special Condition No. 7**, which requires the applicants to submit a pool protection plan.

Because of the fragile nature of coastal bluffs and their susceptibility to erosion, the Commission requires a special condition regarding the types of vegetation to be planted. The applicant currently has no landscape plans. Any proposed vegetated landscaped areas located on site should only consist of native plants or non-native drought tolerant plants, which are non-invasive. The use of non-native vegetation that is invasive can have an adverse impact on the existence of native vegetation. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org/>) and California Native Plant Society (www.CNPS.org). No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property. In addition, any plants in the landscaping plan should be drought tolerant to minimize the use of water. The term "drought tolerant" is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm>.

Due to the potential impacts to the bluff from infiltration of water into the bluff, the Commission imposes **Special Condition No. 8**, which requires that the applicant shall prepare prior to issuance of this permit a final landscape plan, which shall be submitted for the review and approval of the Executive Director. To minimize the potential for the introduction of non-native invasive species and to minimize the potential for future bluff failure, a final landscaping plan shall be prepared by a licensed landscape architect and shall incorporate the following criteria: 1) to minimize the introduction of water into the ground, no permanent in-ground irrigation shall be permitted, any existing in-ground irrigation system shall be disconnected and capped, temporary above ground irrigation to establish the plantings is permitted; and 2) landscaping shall consist of native or deep rooted drought tolerant non-native plants which are non-invasive. Invasive, non-indigenous plant species which tend to supplant native species shall not be used.

g. **Deed Restriction**

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition No. 9** requiring that the property owners record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, any prospective future owners will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

CONCLUSION

The Commission has required **Nine (9) Special Conditions**, which are intended to bring the proposed development into conformance with Section 30253 of the Coastal Act. These special conditions include: 1) assumption of risk; 2) revised project plans showing that no portion of the proposed residence, basement, deck, roofline, stairs or any other principal or accessory development extend seaward of the bluff edge as determined by the Commission's staff geologist.; 3) no future blufftop or shoreline protective device; 4) additional approvals for any future development; 5) evidence of conformance with geotechnical recommendations; 6) submittal of a final drainage and run-off control plan; 7) submittal of a pool protection plan; 8) submittal of a final landscaping plan; and 9) a deed restriction against the property, referencing all of the special conditions contained in this staff report. Only as conditioned to comply with the provisions of these special conditions does the Commission find that the proposed development conforms with Section 30253 of the Coastal Act.

D. PUBLIC ACCESS

Section 30240 (b) of the Coastal Act states:

Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The project site is a coastal bluff top lot situated on the seaward side of Shorecliff Road, which is the first public road immediately inland of Little Corona Beach. The level beach area of this lot that is located at the base of the bluff (Little Corona Beach) is private to the mean high tide line and is designated Recreational and Environmental Open Space in the City's Land Use Plan (LUP). The part of the beach seaward of the mean high tide line, which would change depending on the tide, is public. The public accessway to Little Corona Beach nearest to the subject site is located at the east end of Ocean Boulevard, approximately one quarter mile to the northwest. Development at this site, if approved, must be sited and designed to be compatible with Section 30240 (b) of the Coastal Act. Section 30240 (b) of the Coastal Act states that development in areas adjacent to parks and recreation areas shall be sited and designed to prevent impacts that would significantly degrade those areas. ~~It is necessary to ensure that new development be sited and designed to prevent seaward encroachment of development that would impact public access to coastal resources. The proposed project, as submitted, would be a significant new development encroaching seaward.~~ As proposed, the house and hardscape would have extended seaward of the bluff edge. As conditioned, no portion of the development is seaward of the bluff edge. Also, the site is currently developed with a single-family residence. Upon completion of the project, the development will remain as a single-family residence. In addition, the proposed development would provide more than adequate parking based on the Commission's regularly used parking standard of two (2) parking spaces per individual dwelling unit. Therefore, the project, as conditioned, has been designed to prevent impacts that would significantly degrade the surrounding areas.

Therefore, the Commission finds that the proposed development would be consistent with Section 30212 and 30252 of the Coastal Act regarding public access.

~~The proximity of the proposed project to Little Corona Beach raises Coastal Act concerns, as it would be new seaward encroaching development that could discourage use of the beach. The project could diminish the value of the beach for public use by discouraging public access to the beach through the presence of the new residence above the beach located at the zero bluff edge setback and in some instances beyond the bluff edge and the hardscape and pool located a minimal distance from the bluff edge. The existing beach already is relatively narrow. The proposed bluff development would be imposing structural features that could affect public use of the beach by discouraging the public from using the beach area intended for public use. This would force the public to move more seaward and thus have an impact on public use of the beach. Thus, the proposed project could adversely impact public access to the beach.~~

~~The Commission finds that the proposed project, as currently proposed, is not sited and designed to protect public access to coastal resources. Denial of the proposed project would preserve existing public access resources. The Commission finds that the area in front of the development is a recreation area and that the proposed project would degrade that area and, by discouraging public use of the area, would be incompatible with Section 30240 (b). Therefore, the Commission finds that the proposed project is inconsistent with Section 30240 (b) of the Coastal Act and must be denied.~~

E. ALTERNATIVES

~~Due to the project's impact on coastal views and the alteration of natural landforms, possible project alternatives were requested from the applicants in order to find an approvable project that would limit impact on coastal views and alteration of natural landforms. The applicants' have stated that they have looked at other alternatives; however, the applicants feel that the current project proposal is the best and least impacting. The Commission disagrees and believes that there are other alternatives that are better (more consistent with the policies in Chapter 3 of the Coastal Act, as well as the LUP policies) and that would have less impact on coastal resources.~~

~~Denial of the proposed project will neither eliminate all economically beneficial or productive use of the applicants' property, nor unreasonably limit the owners' reasonable investment-backed expectations of the subject property. The applicants already possess a substantial residential development of significant economic value of the property. In addition, several alternatives to the proposed development exist. Among those possible alternative developments are the following (though this list is not intended to be, nor is it, comprehensive of the possible alternatives):~~

1. No Project

~~No changes to the existing site conditions would result from the "no project" alternative. As such, there would be no disturbance of the bluff face. The bluff face would remain as an undeveloped vegetated slope. The applicants would still have full use of the residence. This alternative would result in the least amount of effects to the environment and also would not have any adverse effect on the value of the property.~~

2. Remodeling of the Existing Home

~~An alternative to the proposed project would be remodeling of the existing home so that it adheres to the minimum 25-foot setback from the bluff edge for habitable structures and the minimum 10-foot from the bluff edge for hardscape appurtenant features so that the potential that the development will contribute to visual impacts and adversely impact slope~~

~~stability will be minimized. This alternative would preserve the bluff face as an undeveloped vegetated slope.~~

3. ~~Demolishing and Rebuilding the Existing Home~~

~~Another alternative to the proposed project would be demolishing and rebuilding the existing home, consistent with the typically imposed setbacks as described above. As such, there would be no disturbance of the bluff face and it would remain as an undeveloped vegetated slope.~~

EF. LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms with the Chapter 3 policies of the Coastal Act.

The City of Newport Beach Land Use Plan (LUP) was certified on May 19, 1982. The certified LUP was updated on January 9, 1990 and it was also significantly updated in October 2005. Because Newport Beach has only a certified Land Use Plan the standard of review for development remains Chapter 3 of the Coastal Act. The certified LUP is used as guidance. Since the City only has an LUP, the policies of the LUP are used only as guidance. The recently updated (October 2005) Newport Beach LUP includes the following policies that relate to development at the subject site:

Require all new blufftop development located on a bluff subject to marine erosion to be sited in accordance with the predominant line of existing development in the subject area, but not less than 25 feet from the bluff edge. This requirement shall apply to the principal structure and major accessory structures such as guesthouses and pools. The setback shall be increased where necessary to ensure safety and stability of the development.

On bluffs subject to marine erosion, require new accessory structures such as decks, patios and walkways that do not require structural foundations to be sited in accordance with the predominant line of existing development in the subject area, but not less than 10 feet from the bluff edge. Require accessory structures to be removed or relocated landward when threatened by erosion, instability or other hazards.

~~The construction of the proposed project is inconsistent with the policies in the City's certified LUP and as well as Chapter 3 policies of the Coastal Act discusses previously, specifically Sections 30251 and 30240 (b). Development on the coastal bluff would cause adverse impacts to the natural landform, the coastal scenic resources and public access, which is inconsistent with these Sections of the Coastal Act. Section 30251 of the Coastal Act states that permitted development should minimize landform alteration and visual impacts. Section 30240 (b) of the Coastal Act states that development in areas adjacent to parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas and be incompatible with their recreational use. Approval of the proposed development would prejudice the City's ability to prepare a Local Coastal Program for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act, as required by Section 30604(a), by authorizing development inconsistent with those policies. Therefore, because the project is found inconsistent with the policies in the City's certified LUP and the Chapter 3 policies of the Coastal~~

~~Act, issuance of the permit would be inconsistent with Section 30604(a), and the permit must be denied.~~

The proposed project was submitted in December 2004, which is prior to the adoption of the recently updated LUP. The certified LUP that was updated on January 9, 1990 did not require a specific 25-foot setback from the bluff edge.

However, minimal grading is proposed in conjunction with the project and therefore no extensive landform alteration will take place. As per the LUP requirements, an assumption of risk special condition is being required and a comprehensive geological investigation was supplied with the application. Therefore, the proposed development is consistent with the guidance as provided by certified LUP policies.

The proposed development, as conditioned, is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

FG. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse effect the activity may have on the environment.

~~As described above, the proposed project would have adverse environmental impacts. There are feasible alternatives or mitigation measures available, such as remodeling of the existing home. Therefore, the proposed project is not consistent with CEQA or the policies of the Coastal Act because there are feasible alternatives that would lessen significant adverse impacts the activity would have on the environment. Therefore, the project must be denied.~~

The proposed project is located in an urban area. All infrastructure necessary to serve the site exists in the area. As conditioned, the proposed project has been found consistent with the hazard and scenic resource protection policies of Chapter 3 of the Coastal Act. Mitigation measures include Special Conditions requiring conformance with geotechnical recommendations, pool leak detection, submittal of a final drainage and run-off control plan and submittal of a final landscaping plan.

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

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Appendix A

A. Coastal Development Permit (CDP) Application No. 5-93-016-(Beall), 161 Shorecliff Drive (Located 4 Lots Up-Coast of Subject Site)

At the March 1983 Coastal Commission Hearing, the Commission approved CDP Application No. 5-93-016-(Beall) for landscape renovation including replacement of two stairs on the bluff top, construction of an overlook and lawn area, and renovation of an irrigation system and shrub planting located on a bluff parcel. An existing single-family residence was located on site; however, no work was proposed to the residence. The issues addressed in the Staff Report were the conformance of the proposed development with the geologic hazard, visual resources, and public access policies of the Coastal Act. Work on the bluff top was proposed and typically a minimal bluff edge setback or application of a stringline would have been applied to achieve the required setback. However, application of a stringline was not applicable due to the topography of the bluff. Therefore, a minimal 25-foot bluff edge setback was imposed instead. The Commission approved the project subject to two (2) Special Conditions. Special Condition No. 1 required revised project plans indicating that no new development would occur within 25-feet of the bluff edge. Special Condition No.2 required screening of a drainage pipe on the bluff and dissipation device at the base of the bluff. As in the case of the proposed project, the implementation of a stringline was deemed inappropriate due to the topography of the bluff. ~~In addition, this project is similar to the proposed project in that since a stringline could not be established to achieve the required set back, a minimal 25-foot geologic setback was imposed instead.~~

B. Coastal Development Permit (CDP) Application No. 5-90-1069-(Real Vest), 165 Shorecliff Road (Located 3 Lots Up-Coast of Subject Site)

At the March 1991 Coastal Commission Hearing, the Commission approved CDP Application No. 5-90-1069-(Real Vest) for demolition and construction of a single-family residence located on a bluff-parcel. In addition, increasing the size of the pool house and constructing a swimming pool and spa were also proposed. The issues addressed in the Staff Report were the conformance of the proposed development with the geologic hazard, visual resources, and public access policies of the Coastal Act. Staff recognized that a true application of the structural stringline is inapplicable at the subject site due to the uneven coastline. In spite of this, rather than abandon the use of a structural stringline, the staff report proposed a “modified” structural stringline and found that the proposed location of the residence was compatible with the purpose and intent of the structural stringline. While the structural components of the project were found to be less problematic, the accessory development proposed seaward of the residence was more contentious. A setback based on a strict stringline for the accessory structures (i.e. swimming pool and decks) is impossible in this instance, as the up-coast property has no equivalent kinds of development. Therefore, a geologic setback of 25-feet was imposed for all development. The Commission approved the project subject to four (4) Special Conditions. Special Condition No. 1 required revised project plans indicating that no new development would occur seaward of the 87-foot contour line. Special Condition No.2 required conformance with geotechnical recommendations. Special Condition No.3 required submittal of a drainage/erosion control plan. Special Condition No.4 required submittal of a landscaping plan. As in the case of the proposed project, the

implementation of a stringline is prevented due to the topography of the bluff. ~~In addition, this project is similar to the proposed project in that since a stringline could not be established to achieve the required set back, a geotechnical setback was imposed instead.~~

The applicant filed a request for reconsideration of Special Condition No. 1. However, that reconsideration request was ultimately withdrawn.

C. Assignment of Permit Application No. T5-90-1069-(Real Vest), 165 Shorecliff Road (Located 3 Lots Up-Coast of Subject Site)

On July 22, 1992, the Coastal Commission approved assignment of permit from Real Vest to the Wahler Family Trust.

D. Amendment to Coastal Development Permit (CDP) Application No. 5-90-1069-A1-(The Wahler Family Trust), 165 Shorecliff Road (Located 3 Lots Up-Coast of Subject Site)

At the August 1993 Coastal Commission Hearing, the Commission approved an Amendment to CDP Application No. 5-90-1069-(The Wahler Family Trust) for construction of a sub-grade pool equipment storage room and grading located on a bluff parcel. The issues addressed in the Staff Report were the conformance of the proposed development with the geologic hazard, visual resources, and public access policies of the Coastal Act. While the proposed storage room would not encroach into the required bluff edge setback previously established in the original permit, additional development (i.e. cut and fill and a retaining wall) was proposed to take place seaward of the bluff edge. Therefore, a Special Condition was imposed, which required submission of revised project plans indicating no development will occur beyond the 87-foot contour line consistent with the bluff top setback established in CDP No. 5-90-1069. ~~As in the case of the proposed project, adherence to a geologic setback was required.~~

E. Request for Reconsideration No. R5-90-1069 and Amendment to Coastal Development Permit (CDP) Application No. 5-90-1069-A2-(The Wahler Family Trust), 165 Shorecliff Road (Located 3 Lots Up-Coast of Subject Site)

On March 1993 construction began associated with CDP No. 5-90-1069. However, development took place that was not approved under this permit: 1) a guesthouse seaward of the modified structural stringline, and 2) grading, construction of a retaining wall, pool and lawn area all seaward of the 87-foot contour elevation. To resolve the issues raised by the unpermitted development and to determine the appropriate setback, a reconsideration request was scheduled for the Commission Hearing in April 1995. At that time the Commission rejected the reconsideration and instead directed staff to accept an application for an amendment.

At the August 1995 Coastal Commission Hearing, the Commission approved a 2nd Amendment to CDP Application No. 5-90-1069-(The Wahler Family Trust) for: 1) construction of a guesthouse seaward of the modified structural stringline, and 2) grading, construction of a retaining wall, pool and lawn area all seaward of the 87-foot contour elevation. The issues addressed in the Staff Report were the conformance of the proposed development with the geologic hazard, visual resources, and public access policies of the Coastal Act. Staff determined that even though construction of the

guesthouse was seaward of the structural stringline, it will not result in adverse visual impacts and is compatible with the existing surrounding development. In addition, Commission staff found that the grading, retaining wall, pool and lawn would maintain a 25-foot setback from the bluff edge; hence it would be consistent with hazard policies of the Coastal Act. The Commission approved the project subject to all previous Special Conditions and also imposed two (2) additional Special Conditions. Special Condition No. 1 modified the original Special Condition No. 1, which prohibited development seaward of the 87-foot contour. The new language stated that the guesthouse could not encroach anymore seaward than on the plans and that all development, including grading, shall be setback a minimum of 25-feet from the edge of the bluff. Special Condition No. 2 required submittal of landscaping plan indicating that only native and low water use plants will be used. ~~As in the case of the proposed project, adherence to a geologic setback was required.~~

F. Coastal Development Permit (CDP) Application No. P-79-4774-(George), 169 Shorecliff Road (Located 2 lots Up-Coast of Subject Site)

At the February 1979 South Coast Regional Commission Hearing, the Commission approved CDP Application No. P-79-4774-(George) for an addition to the existing 1st floor and a new 2nd floor addition to an existing one-story single-family residence on a bluff parcel. In addition, decks and a swimming pool were proposed. The issues addressed in the Staff Report were the conformance of the proposed development with the geologic hazard and visual resource policies of the Coastal Act. The existing structure exceeded the structural and deck stringlines and allowing the proposed pool would increase this seaward intrusion. In addition, the proposed pool would be placed within 13-feet of the bluff edge. Thus, in order to achieve the required setback and to conform with Sections 30251 and 30253 of the Coastal Act, a 25-foot geologic setback from the bluff edge was implemented instead. Therefore, Commission staff recommended approval of the proposed project subject to three (3) Special Conditions. Special Condition No. 1 required revised plans indicating a) no portion of the completed residence, including decks, seaward of the existing residence and decks and b) the swimming pool and associated decking relocated to a point 25-feet landward of the 90-foot elevation line shown on the topography plan (this 25-feet shall be designated as the bluff edge setback). Special Condition No. 2 required geotechnical conformance. Special Condition No. 3 required a deed restriction that prohibited development within the 25-foot bluff edge setback. The permit was never issued. As described in the staff report, the house sits on a fairly level lot, however the rear yard slopes steeply to an abrupt 40-foot high vertical cliff. In this case, the existing structure already exceeded the stringline and the proposed pool would further exceed this stringline. Also, the differing topography of the site would make implementation of the stringline difficult. Thus, application of the stringline would not be acceptable for the site. In addition, the proposed pool would be located within 13-feet of the bluff edge. As in the case of the proposed project, the implementation of a stringline is prevented due to the topography of the bluff. ~~In addition, this project is similar to the proposed project in that since a stringline could not be established to achieve the required set back, a minimal 25-foot geologic bluff edge setback was imposed instead.~~

The applicants appealed the approval and the appeal was heard at the May 1979 South Coast Regional Commission Hearing. The applicants contended that the edge of bluff was interpreted at an artificial location and that setback requirements imposed on the

project by the Commission approval were unfairly imposed. However, the Commission found No Substantial Issue.

G. Coastal Development Permit (CDP) Application No. P-80-6914-(George), 169 Shorecliff Road (Located 2 lots Up-Coast of Subject Site)

At the July 1980 South Coast Regional Commission Hearing, the Commission approved CDP Application No. P-80-6914-(George) for construction of a swimming pool and decks and additions to the 1st floor and 2nd floor of an existing two-story single-family dwelling on a bluff parcel. The issues addressed in the Staff Report were the conformance of the proposed development with the geologic hazard and visual resource policies of the Coastal Act. Staff determined that a structural stringline could not be implemented for the site since the existing structure exceeded the structural stringline. In addition, a deck stringline could not be implemented since the adjacent pool up-coast of the site was located on the far side of the parcel and would not provide a normal application of the stringline. Thus, a 25-foot geologic bluff edge setback was implemented instead. Therefore, Commission staff recommended approval of the proposed project subject to four (4) Special Conditions. Special Condition No. 1 required revised plans indicating a) no portion of the completed residence, including decks, seaward of the existing residence and decks and b) the swimming pool and associated decking relocated to appoint 25-feet landward of the 90-foot elevation line shown on the topography plan (this 25-feet shall be designated as the bluff edge setback). Special Condition No. 2 required geotechnical conformance. Special Condition No.3 required a deed restriction that prohibited development within the 25-foot bluff edge setback. Special Condition No. 4 required an irrevocable offer to dedicate and easement for public access and passive recreational use along the shoreline. The application was approved, but Special Condition No. 4 was deleted. The permit was issued on July 30, 1980. As described in the staff report, the house sits on a fairly level lot, however the rear yard slopes steeply to an abrupt 40-foot high vertical cliff. The topography of this site is different compared to the proposed project site, where the rear yard and bluff face are more of a gentle slope. As in the case of the proposed project, the implementation of a stringline is prevented due to the topography of the bluff. ~~In addition, this project is similar to the proposed project in that since a stringline could not be established to achieve the required set back, a minimal 25-foot geologic bluff edge setback was imposed instead.~~

H. Coastal Development Permit (CDP) Application No. A-78-4367-(Berteau), 173 Shorecliff Road (Located Adjacent Up-Coast of Subject Site)

At the December 1978 South Coast Regional Commission Hearing, the Commission approved CDP Application No. A-78-4367-(Berteau) for construction of a swimming pool and jacuzzi on a bluff parcel (~~Exhibit #5~~). No Special Conditions were imposed. The permit was issued on December 21, 1978.

I. Coastal Development Permit (CDP) Application No. 5-96-234-DW-(Berteau), 173 Shorecliff Road (Located Adjacent Up-Coast of Subject Site)

At the December 1996 Coastal Commission Hearing, the Commission approved a Waiver for CDP Application No. 5-96-234-(Berteau) for the remodel and addition to an existing single-family residence located on a bluff parcel (~~Exhibit #6~~). In addition, minor alterations to the existing swimming pool and spa (within the existing footprint) were proposed. The

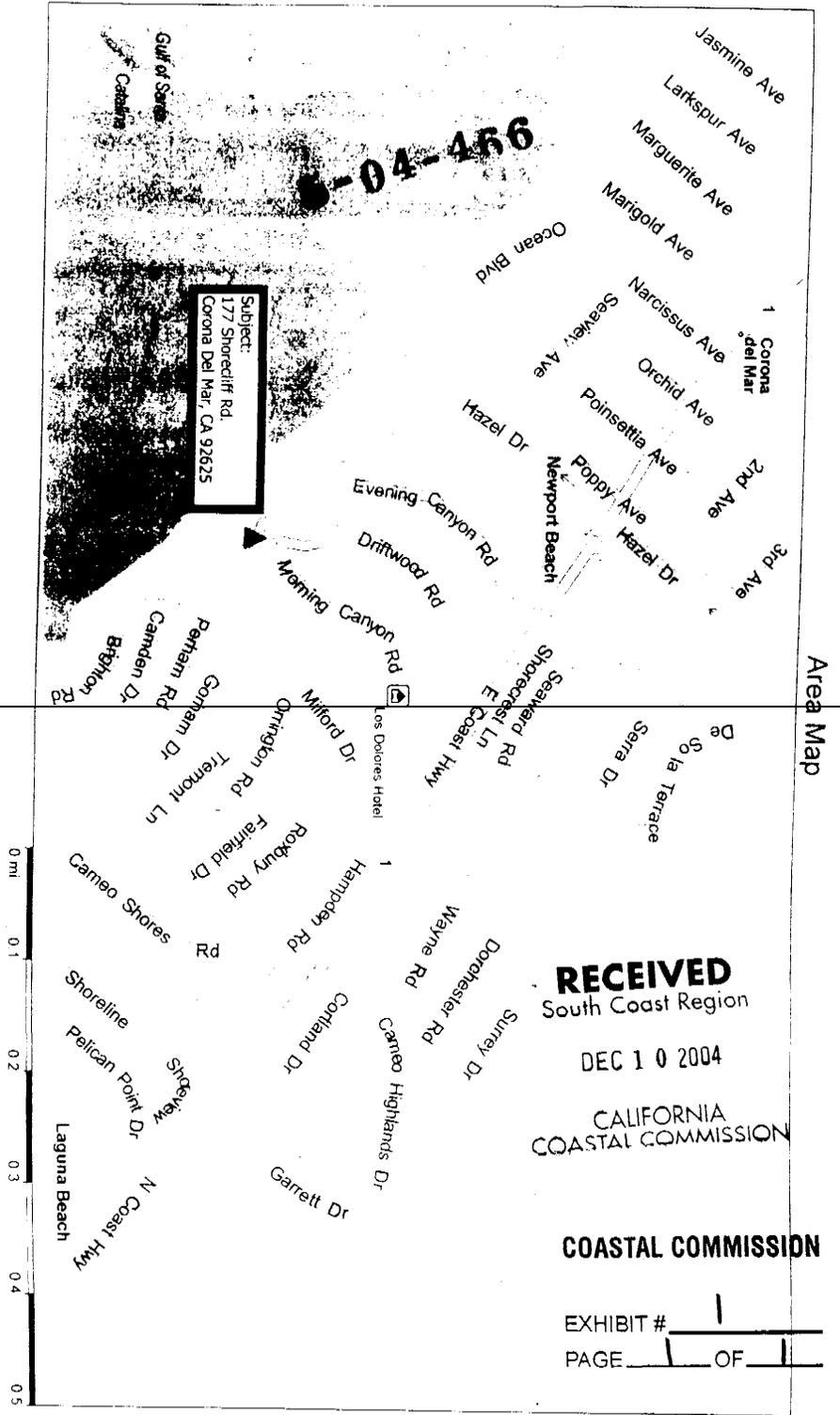
approved plans depict an existing pool equipment room located adjacent to the pool. However, this equipment room was not a part of the proposed project, nor was it approved with this De-Minimis Waiver. The additions to the residence were on the landward side of the residence. The proposed project did not result in any further development seaward of the existing development. Thus, seaward encroachment of new development was not an issue.

J. Administrative Permit (AP) Application No. 5-84-834-(Price), 183 Shorecliff Road (Located Adjacent Down-Coast of Subject Site)

At the January 1985 Coastal Commission Hearing, the Commission approved AP Application No. 5-84-834-(Price) for the demolition and construction of a new single-family residence located on a bluff parcel. No Special Conditions were imposed. The permit was issued on March 15, 1993.

K. Coastal Development Permit (CDP) Application No. 5-94-168-(Price), 183 Shorecliff Road (Located Adjacent Down-Coast of Subject Site)

At the December 1994 Commission Hearing, the Commission approved CDP Application No. 5-94-168-(Price) for an addition to an existing single-family residence located on a bluff parcel. The issues addressed in the Staff Report were the conformance of the proposed development with the environmentally sensitive habitat area, geologic hazard, and public access policies of the Coastal Act. The project site was bound on one side by Morning Canyon and on the other side by Little Corona Beach. Typically, the Commission establishes an appropriate setback for both canyon front and oceanfront bluff top development. A minimal bluff edge setback or application of a stringline would achieve the required setback. The addition was located on the canyonward side of the property and not on the ocean side of the property. However, application of a stringline on the canyonward side of the lot, as well as a stringline on the seaward side of the lot, was not possible since there are no adjacent structures to use to establish the stringlines, due to the location of the lot as the last lot adjacent to the canyon before it reaches the beach. Thus, a bluff edge setback was deemed more appropriate. The setback of the proposed development was 105-feet from the centerline of the canyon, which is substantially more than the minimal 25-foot bluff edge setback that is typically required. Therefore, the proposed development was adequately setback. The Commission approved the project subject to two (2) Special Conditions. Special Condition No. 1 required conformance with geotechnical recommendations. Special Condition No.2 required future development to obtain an amendment. The permit was issued on August 31, 1995. As in the case of the proposed project, the implementation of a stringline is prevented. ~~In addition, this project is similar to the proposed project in that since a stringline could not be established to achieve the required set back, so a minimal 25-foot setback was imposed instead. However, in the case of this project, a setback of 105-feet was proposed, which would be substantially more than the minimal 25-foot geologic setback from bluff edge.~~



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